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ASSESSMENT OF CONTRIBUTIONS TO MAJOR CLAIMS FUNDS

Note by the Director

Summary:	The need for 2002 contributions to Major Claims Funds is examined.
Action to be taken:	Decide on the levy of 2002 contributions to Major Claims Funds.

1 Introduction

1.1 Article 12 of the 1971 Fund Convention provides that the Assembly shall determine the amount of contributions to be levied, if any. For this purpose the Assembly shall make an estimate in the form of a budget of the 1971 Fund's expenditure and income for each calendar year, taking into account the necessity to maintain sufficient liquid funds.

1.2 The 1971 Fund's expenditure consists of:

- (a) costs and expenses of the administration of the 1971 Fund, and any deficit from preceding years;
- (b) payments of claims up to 1 million SDR per incident (minor claims); and
- (c) payments of claims to the extent that the aggregate amount of the payments in respect of any one incident is in excess of 1 million SDR (major claims).

1.3 Expenses mentioned in sub-paragraphs (a) and (b) of paragraph 1.2 above have to be met from the General Fund (Financial Regulation 7.1(c)) and expenses with respect to major claims as defined in sub-paragraph (c) above have to be met from Major Claims Funds (Financial Regulation 7.2(d)).

- 1.4 The assessment of contributions to the General Fund, in accordance with Article 12.2(a) of the 1971 Fund Convention, has been incorporated in the draft budget and is dealt with in a separate document (71FUND/AC.9/17). This document deals only with the assessment of contributions to Major Claims Funds.
- 1.5 As for the individual incidents, reference is made to the information contained in the Financial Statements (document 71FUND/AC.9/7, Annex IV, Schedule II) and to the various documents relating to incidents submitted to the 9th session of the Administrative Council.
- 1.6 It should be noted that any estimate in this document of amounts to be paid by the 1971 Fund in compensation has been made solely for the purpose of the assessment of annual contributions, without prejudice to the position of the 1971 Fund in respect of the claims.
- 1.7 It should also be noted that - unless stated otherwise - information on the payments of compensation and miscellaneous expenses reflects the situation as at 30 June 2002^{<1>}. The Director considers that it might be necessary, in an addendum to this document, to modify some of the proposals set out below in the light of developments.

2 **Vistabella Major Claims Fund**

2.1 **Summary information**

Background information for consideration of the *Vistabella* Major Claims Fund is as follows:

Incident	<i>Vistabella</i>
Place of incident	Caribbean
Date of incident	07/03/91
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£743 092
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£0
Compensation paid by 1971 Fund to 30/6/2002	£1 002 512
Miscellaneous paid by 1971 Fund to 30/6/2002	£216 985
Possible total compensation payable 1/7/02 - 1/3/04	0
Possible total miscellaneous payable 1/7/02 - 1/3/04	£5 000

2.2 **Analysis**

- 2.2.1 During 1994 the total payments by the 1971 Fund in respect of the *Vistabella* incident reached the maximum amount payable from the General Fund, ie 1 million SDR (£743 092). The Assembly decided at its 17th session, in October 1994, to postpone a decision to levy annual contributions to the *Vistabella* Major Claims Fund until the total cost of the incident to the 1971 Fund could be established. Payments in excess of 1 million SDR have been made from money borrowed from the General Fund; this loan will be repaid with interest to the General Fund when contributions to the *Vistabella* Major Claims Fund have been levied and received (cf Financial Regulations 7.1(c)(iv), 7.2(b)(iii) and 7.2(d)).
- 2.2.2 The total of the established claims amounts to £1 002 512. Any further claims are time-barred. The 1971 Fund will incur certain amounts in fees in 2002 and 2003.
- 2.2.3 It is estimated that there will be a deficit on the *Vistabella* Major Claims Fund of approximately £482 000 by 1 March 2004, after deductions for fees and other expenses incurred during 2002 and 2003, as set out in the Annex.

<1> In this document the conversion of currencies has been made on the basis of the rates of exchange applicable on 28 June 2002, unless indicated otherwise.

- 2.2.4 The 1971 Fund has taken legal action against the owner of the *Vistabella* and his insurer for the purpose of recovering the amount of compensation paid by the Fund. It is uncertain when these proceedings will be completed.
- 2.2.5 In view of the uncertainty in respect of the legal proceedings referred to above and the relatively small amounts involved, the Director takes the view that the decision to levy annual contributions to the *Vistabella* Major Claims Fund should be postponed until the final total cost of the incident to the 1971 Fund can be established.

3 **Aegean Sea Major Claims Fund**

3.1 Summary information

Background information for consideration of the *Aegean Sea* Major Claims Fund is as follows:

Incident	<i>Aegean Sea</i>
Place of incident	Spain
Date of incident	03/12/92
Maximum amount of compensation payable by 1971 Fund (ie 60 million SDR – CLC limit) Pts9 513 473 400 – Pts1 121 219 450 = Pts8 392 253 950	£32 680 100
Maximum payable from General Fund (1 million SDR)	£891 471
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£35 000 000
Compensation paid by 1971 Fund to 30/6/2002	£5 178 767
Miscellaneous paid by 1971 Fund to 30/6/2002	£3 213 489
Possible total compensation/indemnification payable 1/7/02–1/3/04	£26 500 000
Possible total miscellaneous payable 1/7/02 – 1/3/04	£1 300 000

3.2 Analysis

- 3.2.1 The maximum amount payable from the General Fund (£891 471) has been used. A total of £35 million has been levied as contributions to the *Aegean Sea* Major Claims Fund. There was a surplus of £45.8 million on that Major Claims Fund as at 31 December 2001 (document 71FUND/AC.9/7, Annex IV, Statement III.1).
- 3.2.2 Claims have been submitted in the Criminal Court in La Coruña for a total amount of some £83 million. In a judgement rendered in April 1996, the Criminal Court considered that in respect of most of the claims submitted, there was insufficient evidence for it to assess the quantum of the damage suffered, and for that reason the Court referred most of the claims to the procedure for the execution of the judgement. This judgement was generally upheld by the Court of Appeal in a judgement rendered in June 1997. Further claims totalling £89 million have been submitted to the Civil Court. Claims became time-barred on or shortly after 3 December 1995.
- 3.2.3 The 1971 Fund has paid approximately £5.2 million in compensation. The total amount of compensation payable under the 1971 Fund Convention is approximately £32.7 million.
- 3.2.4 The Executive Committee has decided that the 1971 Fund's payments should be limited for the time being to 40% of the established claims.
- 3.2.5 At its 5th session the Administrative Council authorised the Director to conclude an agreement with the Spanish Government, the shipowner and his insurer on a global settlement containing certain elements. Under the proposed settlement the 1971 Fund would pay a total of Pts6 508 433 644 (£25.3 million) to claimants. The Fund would in addition pay Pts278 197 307 (£1 083 000) to the shipowner/his insurer in indemnification under Article 5.1 of the 1971 Fund Convention. The Fund would also reimburse the insurer £900 000 relating to his share of joint

costs. It is expected that the global settlement will be concluded during the autumn 2002 (cf document 71FUND/AC.8/6, paragraphs 3.1.2-3.1.8).

- 3.2.6 It is estimated that the balance on the *Aegean Sea* Major Claims Fund was approximately £46.7 million as at 30 June 2002.
- 3.2.7 The Director takes the view that some £27.8 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2004 (the date when any 2003 contributions would be receivable). There would therefore be a considerable surplus on this Major Claims Fund.
- 3.2.8 The Director considers that it is premature to make a decision regarding the distribution of the surplus on the *Aegean Sea* Major Claims Fund until the 1971 Fund's payments have been completed.

4 Braer Major Claims Fund

4.1 Summary information

Background information for consideration of the *Braer* Major Claims Fund is as follows:

Incident	<i>Braer</i>
Place of incident	United Kingdom
Date of incident	05/01/93
Maximum amount of compensation payable by 1971 Fund (ie 60 million SDR - CLC limit)	£45 725 440
Maximum payable from General Fund (1 million SDR)	£904 707
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£49 000 000
Compensation paid by 1971 Fund to 30/6/2002	£45 725 440
Miscellaneous paid by 1971 Fund to 30/6/2002	£5 041 308
Possible total compensation/indemnification payable 1/7/02 - 1/3/04	£0
Possible total miscellaneous 1/7/02 - 1/3/04	£200 000

4.2 Analysis

- 4.2.1 The maximum amount payable from the General Fund (£904 707) has been used. A total of £49 million has been levied as contributions to the *Braer* Major Claims Fund. There was a surplus of £1.1 million on that Major Claims Fund as at 31 December 2001 (document 71FUND/AC.9/7, Annex IV, Statement III.1).
- 4.2.2 The 1971 Fund has paid approximately £45.7 million in compensation, which corresponds to the maximum amount payable by the Fund. Only one claim for £1.5 million is pending before the Court of Session in Edinburgh.
- 4.2.3 As a result of an undertaking by the shipowner's insurer to make funds available to cover any payments over and above the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, 60 million SDR or £50 609 280, all established claims have been paid in full.
- 4.2.4 So far the total amount paid in compensation is £51 808 822, out of which the 1971 Fund has paid £45 725 440 and the shipowner's insurer £6 083 382. There will be no further compensation payments by the 1971 Fund.
- 4.2.5 It is estimated that the balance on the *Braer* Major Claims Fund was approximately £822 000 as at 30 June 2002.

- 4.2.6 The Director takes the view that some £200 000 in fees and expenses may be payable by the 1971 Fund by 1 March 2004 (the date when any 2003 contributions would be receivable).
- 4.2.7 It appears that there will be a small surplus on this Major Claims Fund. The Director considers that a decision in respect of that surplus should be postponed until the total cost of the incident to the 1971 Fund can be established.

5 Keumdong N°5 Major Claims Fund

5.1 Summary information

Background information for consideration of the *Keumdong N°5* Major Claims Fund is as follows:

Incident	<i>Keumdong N°5</i>
Place of incident	Republic of Korea
Date of incident	27/09/93
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£933 146
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£15 000 000
Compensation paid by 1971 Fund to 30/6/2002	£10 470 921
Miscellaneous paid by 1971 Fund to 30/6/2002	£2 003 708
Possible total compensation payable 1/7/02 - 1/3/04	£1 500 000
Possible total miscellaneous payable 1/7/02 - 1/3/04	£50 000

5.2 Analysis

- 5.2.1 The maximum amount payable from the General Fund (£933 146) has been used. A total of £15 million has been levied as contributions to the *Keumdong N°5* Major Claims Fund. There was a surplus of £7.0 million on that Major Claims Fund as at 31 December 2001 (document 71FUND/AC.9/7, Annex IV, Statement III.2).
- 5.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £10.5 million. Claims totalling £1.4 million are pending in the Korean Supreme Court. These claims are partly covered by a deposit of £795 000 made with the court.
- 5.2.3 It is estimated that the balance on the *Keumdong N°5* Major Claims Fund was approximately £7.1 million as at 30 June 2002. This sum does not include the amount of £795 000 deposited with the Supreme Court. There will in any event be a significant surplus in the region of £6 million on this Major Claims Fund.
- 5.2.4 The Director considers that it is premature to make a decision at this stage regarding the distribution of the surplus on the *Keumdong N°5* Major Claims Fund.

6 Sea Prince Major Claims Fund

6.1 Summary information

Background information for consideration of the *Sea Prince* Major Claims Fund is as follows:

Incident	<i>Sea Prince</i>
Place of incident	Republic of Korea
Date of incident	23/07/95
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£975 724
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£26 000 000
Compensation/indemnification paid by 1971 Fund to 30/6/2002	£21 026 917
Miscellaneous paid by 1971 Fund to 30/6/2002	£2 641 363
Possible total compensation payable 1/7/02 - 1/3/04	£1 700 000
Possible total miscellaneous payable 1/7/02 - 1/3/04	£200 000

6.2 Analysis

- 6.2.1 The maximum amount payable from the General Fund (£975 724) has been used. A total of £26 million has been levied as contributions to the *Sea Prince* Major Claims Fund. There was a surplus of £10.7 million on that Major Claims Fund as at 31 December 2001 (document 71FUND/AC.9/7, Annex IV, Statement III.3).
- 6.2.2 The aggregate amount of compensation paid so far by the 1971 Fund is approximately £16.9 million. The 1971 Fund has also paid indemnification of the shipowner at £4.1 million. Claims totalling £1.5 million remain pending in court. The 1971 Fund has deposited £1.1 million with the Court in respect of most of these claims.
- 6.2.3 It is estimated that the balance on the *Sea Prince* Major Claims Fund was approximately £9.6 million as at 30 June 2002. This amount does not include the amount of £1.1 million deposited with the Court.
- 6.2.4 The Director takes the view that some £1.9 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2004 (the date when any 2003 contributions would be receivable).
- 6.2.5 It is expected that there will be a significant surplus on this Major Claims Fund (in the region of £8.5 million) when all claims and expenses regarding this incident have been paid. The Director considers it premature to make a decision in respect of the distribution of the surplus on the *Sea Prince* Major Claims Fund until the 1971 Fund's payments have been completed. He also considers that any future decision should take into account the fact that the Major Claims Funds in respect of the *Sea Prince*, *Yeo Myung* and *Yuil N°1* incidents have been amalgamated^{<2>}.

7 *Yeo Myung* Major Claims Fund

7.1 Summary information

Background information for consideration of the *Yeo Myung* Major Claims Fund is as follows:

<2> As the *Sea Prince*, *Yeo Myung* and *Yuil N°1* incidents occurred in the same Member State within a period of two months, the contributors to Major Claims Funds in respect of these three incidents are the same and the levy for all three incidents is based on the quantities of contributing oil received in the same year (1994). The Assembly therefore decided at its 18th session that these three Major Claims Funds should be amalgamated (documents FUND/A.18/15/Add.1, paragraph 8.2 and FUND/A.18/26, paragraphs 18.4 and 18.5).

Incident	<i>Yeo Myung</i>
Place of incident	Republic of Korea
Date of incident	03/08/95
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£963 298
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£3 000 000
Compensation paid by 1971 Fund to 30/6/2002	£1 035 020
Miscellaneous paid by 1971 Fund to 30/6/2002	£258 361
Possible total compensation payable 1/7/02 - 1/3/04	£182 000
Possible total miscellaneous payable 1/7/02 - 1/3/04	£10 000

7.2 Analysis

- 7.2.1 The maximum amount payable from the General Fund (£963 298) has been used. A total of £3 million has been levied as contributions to the *Yeo Myung* Major Claims Fund. There was a surplus of £3.5 million on that Major Claims Fund as at 31 December 2001 (document 71FUND/AC.9/7, Annex IV, Statement III.3).
- 7.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £1.0 million. One claim for £175 000 is pending in court.
- 7.2.3 It is estimated that the balance on the *Yeo Myung* Major Claims Fund was approximately £3.5 million as at 30 June 2002.
- 7.2.4 The Director takes the view that some £192 000, including fees and expenses, may be payable by 1 March 2004.
- 7.2.5 It is expected that there will be a surplus on this Major Claims Fund of approximately £3.3 million when all claims and expenses regarding this incident have been paid. The Director considers it premature to make a decision in respect of the distribution of the surplus on the *Yeo Myung* Major Claims Fund until the 1971 Fund's payments have been completed. He also considers that any future decision should take into account the fact that the Major Claims Funds in respect of the *Sea Prince*, *Yeo Myung* and *Yuil N°1* incidents have been amalgamated (see footnote ² on page 6).

8 *Yuil N°1* Major Claims Fund

8.1 Summary information

Background information for consideration of the *Yuil N°1* Major Claims Fund is as follows:

Incident	<i>Yuil N°1</i>
Place of incident	Republic of Korea
Date of incident	21/09/95
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£952 517
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£18 000 000
Compensation paid by 1971 Fund to 30/6/2002	£14 487 167
Miscellaneous paid by 1971 Fund to 30/6/2002	£999 913
Possible total compensation payable 1/7/02 - 1/3/04	£500 000
Possible total miscellaneous payable 1/7/02 - 1/3/04	£10 000

8.2 Analysis

- 8.2.1 The maximum amount payable from the General Fund (£952 517) has been used. A total of £18 million has been levied as contributions to the *Yuil N°1* Major Claims Fund. There was a surplus of £5.6 million on that Major Claims Fund as at 31 December 2001 (document 71FUND/AC.9/7, Annex IV, Statement III.3).
- 8.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £14.5 million. Claims totalling £7 million, which have been assessed by the 1971 Fund's experts at £380 000, are pending.
- 8.2.3 It is estimated that the balance on the *Yuil N°1* Major Claims Fund was approximately £5.7 million as at 30 June 2002.
- 8.2.4 The Director takes the view that some £510 000, including fees and expenses, may be payable by the 1971 Fund by 1 March 2004 (the date when any 2003 contributions would be receivable).
- 8.2.5 It is expected that there will be a surplus on this Major Claims Fund when all claims and expenses regarding this incident have been paid. However, claims for significant amounts are pending in court. The Director considers it premature to make a decision in respect of the distribution of the surplus on the *Yuil N°1* Major Claims Fund until the 1971 Fund's payments have been completed. He also considers that any future decision should take into account the fact that the Major Claims Funds in respect of the *Sea Prince*, *Yeo Myung* and *Yuil N°1* incidents have been amalgamated (see footnote ² on page 6).

9 Sea Empress Major Claims Fund

9.1 Summary information

Background information for consideration of the *Sea Empress* Major Claims Fund is as follows:

Incident	<i>Sea Empress</i>
Place of incident	United Kingdom
Date of incident	15/02/96
Maximum amount of compensation payable by 1971 Fund	<i>Not an issue</i>
Maximum payable from General Fund (1 million SDR)	£952 381
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£30 000 000
Compensation paid by 1971 Fund to 30/6/2002	£30 618 434
Miscellaneous paid by 1971 Fund to 30/6/2002	£4 120 347
Possible total compensation payable 1/7/02 - 1/3/04	£1 000 000
Possible total miscellaneous payable 1/7/02 - 1/3/04	£2 000 000

9.2 Analysis

- 9.2.1 The maximum amount payable from the General Fund (£952 381) has been used. A total of £30 million has been levied as contributions to the *Sea Empress* Major Claims Fund. There was a surplus of £4.1 million on that Major Claims Fund as at 31 December 2001 (document 71FUND/AC.9/7, Annex IV, Statement III.2).
- 9.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £30.6 million. A number of claimants have commenced legal action against the 1971 Fund. It is estimated that the total amount of the claims pending in court is in the region of £1 million.
- 9.2.3 It is estimated that the balance on the *Sea Empress* Major Claims Fund was approximately £749 000 as at 30 June 2002.

- 9.2.4 The 1971 Fund has taken recourse action against the Milford Haven Port Authority. This action will result in significant legal costs.
- 9.2.5 The Director takes the view that some £3 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2004 (the date when any 2003 contributions would be receivable).
- 9.2.6 With regard to the estimate of the amount (some £2.3 million) required in respect of the *Sea Empress* Major Claims Fund, reference is made to section 14 below.

10 **Nakhodka Major Claims Fund**

10.1 Summary information

Background information for consideration of the *Nakhodka* Major Claims Fund is as follows:

Incident	<i>Nakhodka</i>
Place of incident	Japan
Date of incident	02/01/97
Maximum amount of compensation payable by 1971 Fund (ie 60 million SDR - CLC limit)	£54 580 062
Maximum payable from General Fund (1 million SDR)	£845 655
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£53 500 000
Compensation paid by 1971 Fund to 30/6/2002	£43 346 110
Miscellaneous paid by 1971 Fund to 30/6/2002	£6 527 873
Possible total expenditure payable 1/7/02 - 1/3/04	£100 000

10.2 Analysis

- 10.2.1 The maximum amount payable from the General Fund (£845 655) has been used. A total of £53.5 million has been levied as contributions to the *Nakhodka* Major Claims Fund. There was a surplus of £5.8 million on that Major Claims Fund as at 31 December 2001 (document 71FUND/AC.9/7, Annex IV, Statement III.2).
- 10.2.2 The aggregate amount of the claims paid by the 1971 Fund so far is approximately £43.3 million. Claims became time-barred on or shortly after 2 January 2000. The total amount of the claims approved exceeds by far the amount available under the 1971 Fund Convention (approximately £50.3 million).
- 10.2.3 It is estimated that the balance on the *Nakhodka* Major Claims Fund was approximately £5.9 million as at 30 June 2002.
- 10.2.4 At their April/May 2002 sessions the 1992 and 1971 Funds governing bodies approved a global settlement containing the elements set out in document 71FUND/AC.7/A/ES.9/14, paragraph 8.4.31. However the remaining claimants, ie a number of Japanese government agencies and the Japan Maritime Disaster Prevention Centre, have not yet given their formal acceptance of the amounts offered in respect of their claims, which are for ¥1 488 million (£8.1 million) and ¥2 043 million (£11.2 million) respectively. The global settlement cannot be concluded until these outstanding claims are settled.
- 10.2.5 The maximum amount payable by the 1971 Fund in compensation is 60 million SDR minus the limitation amount applicable to the shipowner, ie 1 588 000 SDR, which gives 58 412 000 SDR. The 1971 Fund Administrative Council decided, at its 8th session held in July 2002, that the rate of exchange as at 19 February 1997 should be applied for the conversion of 60 million SDR into Yen (document 71FUND/AC.8/6, paragraph 3.3.20). The total amount of the established claims will exceed the amount available under the 1992 Fund Convention.

- 10.2.6 Since 1 January 2000 all compensation payments have been made by the 1992 Fund. The 1971 Fund had then paid ¥8 695 408 430 which at that time was close to its limit. However, using the rate as at 19 February 1997 as decided by the 1971 Fund Administrative Council, the amount payable by the 1971 Fund, ie 58 412 000 SDR (60 million SDR minus the amount payable by the shipowner, 1 588 000 SDR), equals ¥ 9 971 613 596. The 1971 Fund should therefore pay an additional ¥ 1 276 205 166 (£7.0 million) to reach its limit and should reimburse this amount to the 1992 Fund. It is proposed that the adjustment of the payments between the 1992 Fund and the 1971 Fund should be made in the context of the distribution between the 1992 Fund and the 1971 Fund of the amount recovered as a result of the global settlement.
- 10.2.7 The global settlement would result in the IOPC Funds recovering a significant amount, estimated at some ¥5 203 million (£28.5 million), from the shipowner and his insurer (document 71FUND/AC.7/A/ES.9/14, paragraph 8.4.33). The Director made a proposal to the governing bodies' July 2002 session that the financial benefits of the global settlement should be distributed between the 1971 Fund and the 1992 Fund in proportion to their respective liabilities under the 1971 Fund Convention and the 1992 Fund Convention, namely 58 412 000 SDR and 75 million SDR, respectively, ie the 1971 Fund would receive 43.783% and the 1992 Fund 56.217%. On that basis, the 1971 Fund would recover some £12.5 million and the 1992 Fund some £16 million. However, one delegation proposed that the distribution should be made in such a way that the 1992 Fund should be reimbursed in full first. That proposal would result in the 1992 Fund recovering the entire amount of the £28.5 million and the 1971 Fund recovering nothing. The 1992 Fund Executive Committee and the 1971 Fund Administrative Council will be invited to decide, at their October 2002 sessions, on what basis the amount recovered should be distributed between the two Funds (cf document 71FUND/AC.8/6, paragraphs 3.3.21 - 3.3.27).
- 10.2.8 If as a result of the global settlement the 1971 Fund recovers monies from the shipowner/UK Club, there may be a significant surplus on the *Nakhodka* Major Claims Fund even after the 1971 Fund has made the reimbursement to the 1992 Fund referred to in paragraph 10.2.6. Pursuant to Financial Regulation 4.4, the surplus should be repaid to the contributors in the States that were Parties to the 1971 Fund Convention on the date of the incident (2 January 1997) who have paid contributions to the *Nakhodka* Major Claims Fund on the basis of the quantities of contributing oil received by each contributor during 1996 (ie the year before the incident). Since it is not yet clear when the global settlement will be concluded, and whether monies will be recovered by the 1971 Fund as a result of the settlement, the Director is not in a position to make any proposal concerning repayment at this stage. However, he may make such a proposal in an addendum to this document in the light of any developments before the October 2002 Administrative Council session.

11 *Nissos Amorgos* Major Claims Fund

11.1 Summary information

Background information for consideration of the *Nissos Amorgos* Major Claims Fund is as follows:

Incident	<i>Nissos Amorgos</i>
Place of incident	Venezuela
Date of incident	28/02/97
Maximum amount of compensation payable by 1971 Fund (ie 60 million SDR - CLC limit)	£47 522 100
Maximum payable from General Fund (1 million SDR)	£849 762
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£2 000 000
Compensation paid by 1971 Fund to 30/6/2002	£2 561 449
Miscellaneous paid by 1971 Fund to 30/6/2002	£1 072 506
Possible total compensation/indemnification payable 1/7/02–1/3/04	£20 000 000
Possible total miscellaneous payable 1/7/02 – 1/3/04	£800 000

11.2 Analysis

- 11.2.1 The maximum amount payable from the General Fund (£849 762) has been used. A total of £2 million has been levied as contributions to the *Nissos Amorgos* Major Claims Fund. There was a surplus of £604 000 on that Major Claims Fund as at 31 December 2001 (document 71FUND/AC.9/7, Annex IV, Statement III.4). The Director did not use the authorisation to levy a further £21 million for payment during the second half of 2002.
- 11.2.2 It is not possible to estimate at this stage the total amount of the established claims. However, based on the estimates of the 1971 Fund's experts, the Director considers that it would be appropriate to take as a basis a total figure for the established claims in the region of £20 million.
- 11.2.3 It is estimated that the deficit on the *Nissos Amorgos* Major Claims Fund was approximately £314 000 as at 30 June 2002.
- 11.2.4 On the basis of the estimate of the total figure for the established claims set out in paragraph 11.2.3, the Director takes the view that some £20.8 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2004 (the date when any 2003 contributions would be receivable).
- 11.2.5 As set out in the Annex, it appears that on that basis an estimated £21.2 million would be required in respect of the *Nissos Amorgos* Major Claims Fund. In this regard reference is made to section 14 below.
- 11.2.6 It should be noted, however, that the total amount of the claims in court by far exceeds the maximum amount payable under the 1971 Fund Convention (approximately £47.5 million) and that some of these claims are pending in the Supreme Court of Venezuela which may render its judgements in the near future. The outcome of these proceedings is uncertain and there would be no possibility to appeal against the Supreme Court's judgements.

12 **Osung N°3 Major Claims Fund**

12.1 Summary information

Background information for consideration of the *Osung N°3* Major Claims Fund is as follows:

Incident	<i>Osung N°3</i>
Place of incident	Republic of Korea
Date of incident	03/04/97
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Maximum payable from General Fund (1 million SDR)	£845 906
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£7 300 000
Compensation paid by 1971 Fund to 30/6/02	£8 193 887
Miscellaneous paid by 1971 Fund to 30/6/02	£1 540 243
Possible total expenditure payable 1/7/02 - 1/3/04	0

12.2 Analysis

12.2.1 The maximum amount payable from the General Fund (£845 906) has been used. A total of £7.3 million has been levied as contributions to the *Osung N°3* Major Claims Fund. There was a deficit of £1.5 million on that Major Claims Fund as at 31 December 2001 (document 71FUND/AC.9/7, Annex IV, Statement III.4).

12.2.2 The 1971 Fund has paid compensation totalling £8.2 million.

12.2.3 All claims have been settled and paid and all expenses have also been paid.

12.2.4 It is estimated that the deficit on the *Osung N°3* Major Claims Fund was approximately £1.5 million as at 30 June 2002. This deficit has been covered by a loan from the *Aegean Sea* Major Claims Fund. The *Osung N°3* Major Claims Fund is paying interest on this loan.

12.2.5 Since all claims and expenses relating to the *Osung N°3* incident have been paid, contributions should normally have been levied to cover the deficit on this Major Claims Fund. However, practically all those who would be obliged to pay contributions to this Major Claims Fund will receive reimbursement for higher amounts when distribution will be made of the surplus on other Major Claims Fund dealt with above. It is proposed therefore that no levy should be made at this stage to the *Osung N°3* Major Claims Fund.

13 **Pontoon 300 Major Claims Fund**

13.1 Summary information

Background information for consideration of the *Pontoon 300* Major Claims Fund is as follows:

Incident	<i>Pontoon 300</i>
Place of incident	United Arab Emirates
Date of incident	07/01/98
Maximum amount of compensation payable by 1971 Fund	£52 074 290
Maximum payable from General Fund (1 million SDR)	£819 583
Estimated General Fund balance 30/6/2002	£0
Total previously levied to Major Claims Fund	£0
Compensation paid by 1971 Fund to 30/6/2002	£817 208
Miscellaneous paid by 1971 Fund to 30/6/2002	£370 136
Possible total compensation payable 1/7/02 - 1/3/04	£5 000 000
Possible total miscellaneous payable 1/7/02 - 1/3/04	£500 000

13.2 Analysis

- 13.2.1 The maximum amount payable from the General Fund incident (£819 583) has been used. No levy has been made to the *Pontoon 300* Major Claims Fund. There was a deficit of £303 000 as at 31 December 2001.
- 13.2.2 Claims have been presented for a total amount of some £37 million. However, in the 1971 Fund's view, claims totalling £34 million are considered by the Fund to be time-barred and claims totalling £27 million are considered to be inadmissible.
- 13.2.3 It is estimated that there was deficit on the *Pontoon 300* Major Claims Fund of some £376 000 as at 30 June 2002. This deficit has been covered by a loan from the General Fund. The *Pontoon 300* Major Claims Fund will pay interest on this loan.
- 13.2.4 It is not possible to estimate at this stage the total amount of the established claims. However, based on the estimates of the 1971 Fund's experts, the Director takes the view that it would be appropriate to take as a basis a total figure for the established claims in the region of £5 million.
- 13.2.5 The Director takes the view that some £5.5 million, including fees and expenses, may be payable by the 1971 Fund by 1 March 2004 (the date when any 2003 contributions would be receivable).
- 13.2.6 As set out in the Annex, it appears that an estimated £5.9 million would be required in respect of the Major Claims Fund. In view of the uncertainty as to the total established claims, the Director takes the view, however, that a decision to levy contributions to the *Pontoon 300* Major Claims Fund should be postponed until the situation becomes clearer.

14 Director's proposals

14.1 Sums required

- 14.1.1 The Director proposes that the decision to levy annual contributions to the *Vistabella* Major Claims Fund should be postponed until the final cost of the incident for the 1971 Fund can be established (paragraph 2.2.5)
- 14.1.2 As indicated in paragraphs 3.2.8, 4.2.7, 5.2.4, 6.2.5, 7.2.5 and 8.2.5, the Director considers that it is premature to make decisions at this stage regarding the distribution of the surpluses of the *Aegean Sea*, *Braer*, *Keumdong N° 5*, *Sea Prince*, *Yeo Myung* and *Yuil N°1* Major Claims Funds.
- 14.1.3 The Director considers that contributions of £2.3 million may be required in 2002 to balance the *Sea Empress* Major Claims Fund, £21.2 million to balance the *Nissos Amorgos* Major Claims Fund and £1.5 million to balance the *Osung N° 3* Major Claims Fund (cf paragraphs 9.2.6, 11.2.6 and 12.2.4).
- 14.1.4 As set out in paragraph 12.2.5, the Director takes the view that no levy should be made to the *Osung N°3* Major Claims Fund at this stage.
- 14.1.5 The Director concludes, for the reason set out in paragraph 13.2.6, that the decision to levy contributions to the *Pontoon 300* Major Claims Fund should be postponed.
- 14.1.6 The Director believes it is important that sufficient funds are available for the payment of claims arising out of the above-mentioned incidents. The sources of funds which can be considered for this purpose are the working capital, loans from balances on other Major Claims Funds and the levying of annual contributions. In the light of the position taken by the Assembly on previous occasions, the Director is of the view that the 1971 Fund should not take loans from banks and other financial institutions for this purpose.

14.2 The working capital

14.2.1 The working capital has been fixed by the Assembly at £5 million.

14.2.2 In order to ensure that funds are available to meet unforeseen payments, cover the 1971 Fund's share of the costs of running the joint Secretariat and the costs for winding up the 1971 Fund the Director considers that the working capital should not be used for the payment of claims arising from the incidents referred to in section 14.3 over and above 1 million SDR.

14.3 Loans from balances on other Major Claims Funds

14.3.1 Financial Regulation 7.2(d) provides that monies in any Major Claims Funds may be used to make loans to other Major Claims Funds, to the extent that sufficient money is not available in the relevant funds. Regulation 7.2(b) provides that any such loans shall be repaid with interest.

14.3.2 However, in his report on the 1998 accounts the External Auditor indicated that it may become necessary, with the 1971 Fund's declining Membership, to restrict inter-fund borrowing between Major Claims Funds to those incidents where the same contributors are involved (document 71FUND/A.22/8, Annex II, paragraph 46). This would rule out the possibility of loans between existing Major Claims Funds, with the exception of the amalgamated *Sea Prince/Yeo Myung/Yuil N°1* Major Claims Fund (see footnote² above). The External Auditor referred to this recommendation in his report on the 1999 accounts (document 71FUND/A.23/8, Annex II, paragraph 14).

14.3.3 In the document relating to the assessment of annual contributions presented to the Assembly's 22nd session, the Director expressed the view that a distinction should be made between Major Claims Funds for those incidents which occurred before the end of the transitional period (ie 15 May 1998) and Major Claims Funds for incidents which have occurred or may occur thereafter. As regards the former group of Major Claims Funds, the contributors are largely identical and there is a sufficient contributions base for further levies to Major Claims Funds relating to those incidents. The Director therefore took the view that it would be appropriate to continue to allow internal loans between such Major Claims Funds in the future. With regard to the second group of Major Claims Funds (ie those relating to incidents after 15 May 1998), however, the situation in the Director's view was different. As a result of the progressively decreasing quantities of contributing oil which would form the basis for the levy of contributions to such Major Claims Funds, the Director considered that internal loans should not be taken between such Major Claims Funds nor between Major Claims Funds of the second group and Major Claims Funds of the first group.

14.3.4 At its 62nd session the Executive Committee, acting on behalf of the Assembly, noted the Director's position as regards inter-fund borrowing and endorsed his position (document 71FUND/EXC.62/14/A.22/23, paragraph 25.10).

14.3.5 It appears that, from those Major Claims Funds on which it is projected that there will be surpluses (*Aegean Sea, Braer, Keumdong N°5, Sea Prince, Yeo Myung and Yuil N°1*) on 1 March 2004 (cf the Annex), an amount in the region of £43.2 million might be available for making loans to those Major Claims Funds (*Vistabella, Sea Empress, Nakhodka, Nissos Amorgos, Osung N°3 and Pontoon 300*) on which it is estimated that some £32.4 million will be needed by 1 March 2004.

14.3.6 All incidents dealt with in this document occurred before the end of the transitional period (ie 15 May 1998). The Director considers, therefore, that it would be appropriate to make internal loans between the Major Claims Funds relating to these incidents. As indicated in paragraph 14.3.5, there would be sufficient surplus funds in the Major Claims Funds referred to there. The Director proposes therefore that the sums which may be required to balance the

Vistabella, *Sea Empress*, *Osung N°3* and *Pontoon 300* incidents should be made available by means of internal loans from those Major Claims Funds which have a surplus.

14.3.7 In view of the uncertainty as to whether there will be a surplus or a deficit on the *Nakhodka* Major Claims Fund, the Director is unable to make any proposal in respect of that Major Claims Fund. However, if the 1971 Fund were not to receive any reimbursement as a result of the global settlement, the ensuing deficit in the region of £1.2 million could be covered by a loan from the Major Claims Funds referred to in paragraph 14.3.5 on which it is projected that there will be a surplus.

14.3.8 The same could apply to the *Nissos Amorgos* Major Claims Fund, for which there is an estimated deficit of £21.1 million. However, in view of the great uncertainty as to the total amount of the established claims, the Director proposes that internal loans should not be relied upon in this instance, and that a levy should be made to that Major Claims Fund.

14.4 Proposed levy

On the basis of these considerations, the Director proposes that a levy in the form of 2002 annual contributions should be made only to the *Nissos Amorgos* Major Claims Fund for £21 million.

14.5 Timing of levy

14.5.1 Internal Regulation 3.7, provides that unless the Assembly decides otherwise, payment of annual contributions shall be due on 1 March of the year following that in which the Assembly decides on the levy of annual contributions.

14.5.2 At its 2nd extraordinary session, the Assembly decided to introduce a deferred invoicing system. Under this system the Assembly fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower amount should be invoiced for payment by 1 March in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary. The Assembly also decided that the Director was authorised to decide whether to issue invoices for all or part of the additional amount determined by the Assembly (document 71FUND/A/ES.2/22, paragraph 11).

14.5.3 The Director is of the view that the entire proposed levy to the *Nissos Amorgos* Major Claims Fund (£21 million) should be deferred and that the Director should be authorised to decide whether to invoice all or part of the deferred levy.

15 Action to be taken by the Administrative Council

The Administrative Council is invited, in accordance with Article 12 of the 1971 Fund Convention:

- (a) to take note of the information contained in this document;
- (b) to decide in respect of the assessment for 2002 contributions to the *Nissos Amorgos* Major Claims Fund (paragraphs 11.2.6 and 14.4) and on the date of payment of these contributions (paragraph 14.5.3);
- (c) to decide on the Director's proposal that a decision to levy annual contributions to the *Vistabella* Major Claims Fund should be postponed until the total cost of the incidents to the 1971 Fund can be established (paragraph 2.2.5);
- (d) to consider the Director's proposal that the deficits on the *Vistabella*, *Sea Empress*, *Osung N°3* and *Pontoon 300* Major Claims Funds should for the time being be covered by

means of internal loans from those Major Claims Funds which have a surplus (paragraphs 2.2.5, 9.2.6, 12.2.4, 13.2.6 and 14.3.6);

- (e) to consider the Director's view that that it is premature for the Administrative Council to make a decision at this stage regarding the distribution of the surplus on the *Aegean Sea*, *Braer*, *Keumdong N° 5*, *Sea Prince*, *Yeo Myung* and *Yuil N°1* Major Claims Funds (paragraphs 3.2.8, 4.2.7, 5.2.4, 6.2.5, 7.2.5, and 8.2.5); and
- (f) to note the Director's view of the situation in respect of the *Nakhodka* Major Claims Fund (paragraphs 10.2.8 and 14.3.7).

* * *

ANNEX

Major Claims Fund expenditure

(Figures in Pounds Sterling)

Incident	Date	Previous levies				Maximum Paid From General Fund: 1 million SDR	Payments by 31/12/01 (including General Fund)		Major Claims Fund Balance 31.12.01	2002 Expenditure to 30/6/02		2002 Major Claims Fund Estimated Income		Estimated Major Claims Fund Balance 30.06.02	Possible Total Expenditure (comp/indem and miscellaneous 1/7/02-1/3/04)	Deposit with Courts for compensation claims (included under Miscellaneous	Projected Major Claims Fund Surplus on/ (Requirement up to 01.03.04)
		Contribution Year	Assembly Session	Date Due	Amount		Compensation Paid by 31.12.01	Miscellaneous Paid by 31.12.01		Compensation/ Indemnification Paid 1/1/02-30/6/02	Miscellaneous Paid 1/1/02-30/6/02	Contributions due in 2002	Interest to 30/6/02				
Vistabella	07.03.91					743 092	(1 002 512)	(213 415)	(472 834)	0	(3 570)	0	0	(477 000)	(5 000)		(482 000)
Aegean Sea	03.12.92	1993	16th	01.02.94	20 000 000												
		1994	17th	01.02.95	15 000 000												
					35 000 000	891 471	(5 178 767)	(3 202 246)	45 797 143	0	(11 243)	0	916 000	46 702 000	(27 800 000)		18 902 000
Braer	05.01.93	1993	16th	01.02.94	35 000 000												
		1995	18th	01.02.96	14 000 000												
					49 000 000	904 707	(45 725 440)<1>	(4 987 020)	1 107 990	(249 005)	(54 288)	0	17 000	822 000	(200 000)		622 000
Keumdong N°5	27.09.93	1993	16th	01.02.94	5 000 000												
		1994	17th	01.02.95	10 000 000												
					15 000 000	933 146	(10 470 921)	(2 003 708)<2>	6 962 564	0	0	0	140 000	7 103 000	(1 550 000)	795 000	6 348 000
				01.09.97	5 000 000												
Sea Prince	23.07.95	1995	18th	01.02.96	11 000 000												
		1996	19th	01.02.97	7 000 000												
			19th	01.09.97	5 000 000												
		1997	20th	01.02.98	3 000 000												
					26 000 000	975 724	(21 026 917)	(1 364 844)	10 728 531	0	(1 276 519)<2>	0	190 000	9 643 000	(1 900 000)	1 100 000	8 843 000
				01.09.97	18 000 000												
				01.09.98	7 000 000												
Yeo Myung	03.08.95	1995	18th	01.02.96	2 000 000												
		1996	19th	01.02.97	1 000 000												
					3 000 000	963 298	(1 035 020)	(258 361)	3 476 795	0	0	0	70 000	3 547 000	(192 000)		3 355 000
				01.09.97	4 000 000												
Yuil N°1	21.09.95	1995	18th	01.02.96	7 000 000												
		1996	19th	01.02.97	5 000 000												
			19th	01.09.97	6 000 000												
					18 000 000	952 517	(14 487 167)	(987 959)	5 595 662	0	(11 954)	0	112 000	5 696 000	(510 000)		5 186 000
				01.09.97	4 000 000												
				01.09.98	4 000 000												
				01.09.99	2 500 000												
Sea Empress	15.02.96	1996	19th	01.02.97	10 000 000												
			19th	01.09.97	20 000 000												
					30 000 000	952 381	(27 322 079)	(4 044 523)	4 105 539	(3 296 355)	(75 824)	0	15 000	749 000	(3 000 000)		(2 251 000)
				01.09.99	7 000 000												
				01.09.00	2 000 000												
Nakhodka	02.01.97	1996	3rd ext	01.09.97	15 000 000												
		1997	20th	01.02.98	30 000 000												
		1998	21st	01.02.99	7 500 000												
		1999	22nd	01.03.00	1 000 000												
					53 500 000	845 655	(43 346 110)	(6 527 873)	5 790 865	0	0	0	116 000	5 907 000	(7 100 000)		(1 193 000)
				01.09.98	5 000 000												
Nissos Amorgos	28.02.97	1997	20th	01.02.98	2 000 000												
						849 762	(1 699 496)	(1 023 476)	604 285	(861 953)	(49 030)	0	(7 000)	(314 000)	(20 800 000)		(21 114 000)
				01.09.98	3 000 000												
				01.09.01	25 000 000												
				01.09.02	21 000 000												
Osung N°3	03.04.97	1997	20th	01.02.98	2 000 000												
		1999	22nd	01.03.00	5 300 000												
					7 300 000	845 906	(8 193 887)	(1 540 243)	(1 466 673)	0	0	0	(30 000)	(1 497 000)	0		(1 497 000)
				01.09.98	8 000 000												
				01.09.00	2 000 000												
Pontoon 300	07.01.98					819 583	(807 038)	(315 326)	(302 782)	(10 170)	(54 810)	0	(8 000)	(376 000)	(5 500 000)	1 895 000	(5 876 000)
														77 505 000	(68 557 000)		10 843 000

<1> In the 2001 Financial Statements compensation payments totalled £46 278 111, out of which £552 671 had been paid from the shipowner's indemnification amount.

<2> Includes deposits with courts for compensation claims